

Mail Stop Interference  
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Alexandria, VA 22313-1450  
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Paper 1

Filed October 6, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Stryker Corporation,  
Junior Party  
(Patent 5,266,683,  
Inventors: Hermann Oppermann, Engin Ozkaynak, Thangavel Kuberasampath,  
David C. Rueger, Roy H.L. Pang),

v.

Genetics Institute, LLC,  
Senior Party  
(Application 08/319,831,  
Inventors: Rodney M. Hewick, Jack H. Wang,  
John M. Wozney, Anthony J. Celeste).

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Patent Interference 105,508 (RES)  
(Technology Center 1600)

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**DECLARATION - Bd.R. 203(b)<sup>1</sup>**



**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.

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<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

**Part B. Judge managing the interference**

Administrative Patent Judge Richard E. Schafer has been designated to manage the interference. 37 CFR § 41.104(a).

**Part C. Standing order**

A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

**Part D. Initial conference call**

A telephone conference call to discuss the interference is set for **2:00 p.m. on December 1, 2006** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (37 CFR § 41.120 & 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

The time periods for taking action during the motion phase are set in an order accompanying this declaration.

**Part E. Identification and order of the parties**

**Junior Party**

Patent:	5,266,683 based on Application 07/841,646 filed February 21, 1992
Named Inventors:	Hermann Oppermann Engin Ozkaynak Thangavel Kuberasampath David C. Rueger Roy H.L. Pang
Title:	Osteogenic Proteins
Assignee:	Stryker Corporation

**Senior Party**

Application: 08/319,831 filed October 6, 1994

Named inventors: Rodney M. Hewick  
Jack H. Wang  
John M. Wozney  
Anthony J. Celeste

Involved Application: 08/319,831 filed October 6, 1994

Title: Bone and Cartilage Inductive Proteins

Assignee: Genetics Institute, LLC

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. 37 CFR § 41.154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

**Part F. Count and claims of the parties**

Count 1

1. A purified BMP-8 protein or an isolated OP-2 protein comprising the sequence described by residues 1 to 402 of Seq. ID No. 28 of Patent 5,266,683 which protein induces new bone formation in mammals.

The claims of the parties are:

Stryker (Oppermann):	Claims 1-58
Genetics (Hewick):	Claims 1, 26-29

The claims of the parties that correspond to Count 1 are:

Stryker (Oppermann):	Claims 21-26, 27/21, 28, 29, 39, 45-54, 58
Genetics (Hewick):	Claims 1, 26-29

The claims of the parties that do not correspond to Count 1, and therefore are not involved in the interference, are:

Stryker (Oppermann):	Claims 1-20, 27/6, 27/15, 27/18, 30-38, 40-44, 55-57
Genetics (Hewick):	None

The parties are accorded the following benefit for Count 1:

Stryker (Oppermann):	None
Genetics (Hewick):	Application 07/800,364      November 26, 1991

**Part G. Heading to be used on papers**

The following heading must be used on all papers filed in this interference, see SO ¶ 106.1.1:

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent Interference 105,508 (RES)  
(Technology Center 1600)

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**Part H. Order form for requesting file copies**

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Parts E and F of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

/Richard E. Schafer/  
Administrative Patent Judge

Enc:

Copy of STANDING ORDER  
Copy of Patent 5,266,683  
Copy of claims of Application 08/319,831

cc (via overnight delivery):

Attorney for Genetics:

Finnegan, Henderson, Farabow, Garrett & Dunner LLP  
901 New York Avenue, NW  
Washington, DC 20001-4413

Attorney for Stryker:

Kirkpatrick & Lockhart Nicholson Graham LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2950



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Richard E. Schafer  
Telephone: (571) 272-9797  
Facsimile: (571) 273-0042

Applicants:  
Genetics Institute, LLC,  
Rodney M. Hewick, Jack H. Wang,  
John M. Wozney, Anthony J. Celeste  
Serial No. 08/319,831,  
Filed: 10/06/94  
For: Bone and Cartilage Inductive  
Proteins

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,508.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/ss/ Richard E. Schafer  
Richard E. Schafer  
Administrative Patent Judge

## INTERFERENCE DIGEST

Interference No. 105,508

Name: Rodney M. Hewick, Jack H. Wang,  
John M. Wozney, Anthony J. Celeste

Serial No.: 08/319,831

Title: Bone and Cartilage Inductive Proteins

Filed: 10/06/94

Interference with Oppermann et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, \_\_\_\_\_ Dated, \_\_\_\_\_

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Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.